

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 JENNIFER S. FISCHMAN,

6 Plaintiff,

Index No.

7 -against-

18-CV-08188

8 MITSUBISHI CHEMICAL HOLDINGS AMERICA,
9 INC.; MITSUBISHI CHEMICAL HOLDINGS
10 CORPORATION; NICOLAS OLIVA, in his
11 individual and professional capacities;
12 DONNA COSTA, in her individual and
13 professional capacities; and JOHN DOES
14 1-10, in their individual and
15 professional capacities,

16 Defendants.
17 -----x

18
19 June 28, 2021

20 10:09 a.m.
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

June 28, 2021

10:09 a.m.

Continued videotaped deposition of
JENNIFER FISCHMAN, held at the offices of Gordon
Rees Scully Mansukhani LLP, One Battery Park
Plaza, New York, New York, pursuant to Notice,
before Lynne D. Metz, a Shorthand Reporter and
Notary Public of the State of New York.

A P P E A R A N C E S:

VALLI KANE & VAGNINI

Attorneys for the Plaintiff

600 Old Country Road

Suite 519

Garden City, New York 11530

BY: MATTHEW L. BERMAN, ESQ.

ROBERT VALLI, ESQ.

SARA WYN KANE, ESQ.

GORDON REES SCULLY MANSUKHANI LLP

Attorneys for Defendants MITSUBISHI CHEMICAL

HOLDINGS AMERICA, INC., NICOLAS OLIVA AND

DONNA COSTA

One Battery Park Plaza

28th Floor

New York, New York 10004

BY: MERCEDES COLWIN, ESQ.

BRITTANY L. PRIMAVERA, ESQ.

File # MCHEM-1135398

SHEARMAN & STERLING
Attorneys for Defendant MITSUBISHI CHEMICAL
HOLDINGS CORPORATION

599 Lexington Avenue

New York, New York 10022

BY: JEROME S. FORTINSKY, ESQ.

SAM JOLLY, ESQ.

CLARICK GUERON REISBAUM

Attorneys for Defendant DONNA COSTA

220 Fifth Avenue

New York, New York 10001

BY: NICOLE GUERON, ESQ.

ALSO PRESENT:

Rocco Mercurio - videographer

Nicolas Oliva

Donna Costa

Skyler Stern - intern

Adriana Acosta - intern

1 J. Fischman

2 A. Yes.

3 Q. -- to the places you applied?

4 A. Yes, I did.

5 Q. Do you know whether they actually
6 would have given you good references?

7 A. Yes, I do.

8 Q. How do you know?

9 A. Because I was still in contact with
10 them. I still had friendships with them.

11 Q. How many companies did you apply to?

12 A. I think over a hundred.

13 Q. How did you go about looking for a
14 job?

15 A. I looked when I first was terminated I
16 met with several recruiters. People I had known
17 in the industry. People that were friends,
18 family. People that had placed me in this job. I
19 had spoken with many of them. I reached out to
20 Bliss who is a legal seconder. I spoke with
21 people at Axiom and I did online research for
22 companies for which I had an appropriate
23 background for having come from manufacturing and
24 industrial corporations.

25 Q. What is Axiom?

1 J. Fischman

2 A. They are a temporary lawyer provider,
3 contract lawyer. After multiple conversations
4 with Axiom and Bliss it became clear that I could
5 not take a temporary position from them because I
6 needed to be hired by a corporation in order to
7 practice law in the State of New York.

8 Q. Did you ever take the New York Bar?

9 A. I did not.

10 Q. Why not?

11 A. I had taken the California Bar in 1996
12 and it took three months of extraordinary time,
13 energy and effort and emotional strength to sit
14 for the bar exam and I did not feel that at this
15 time in my life that I had the emotional strength
16 to sit for that bar exam that many people do fail
17 and John F. Kennedy failed it three times. It was
18 intimidating at that time in my life and I didn't
19 feel that was necessary.

20 Q. Where were you looking to be hired?

21 A. I looked in kind of -- I am sorry. It
22 is very distracting when everybody is asking
23 questions.

24 MS. COLWIN: I am sorry.

25 A. That's okay.

1 J. Fischman

2 I looked all up and down the eastern
3 seaboard. I wanted to stay in the New York
4 Metropolitan area of course because my children
5 are in school here. My family is here. I have
6 elderly parents who are here. I looked New York.
7 I looked in places where I could probably waive in
8 like Florida, Maryland, D.C. I looked at
9 government contractors in D.C. Maryland, New
10 Jersey and New York, Connecticut.

11 Q. Can you waive that in New York?

12 A. No. They don't have reciprocity with
13 California.

14 Q. Were there other companies besides
15 Axiom and Bliss where you couldn't go further in
16 the process because you were not a member of the
17 bar?

18 A. No.

19 Q. It was just those two?

20 A. Because of their business model they
21 are a contract employer. They loan out attorneys
22 to do contract work like document review and et
23 cetera. So those weren't full time positions.
24 Those were sort of continue with some income.

25 Q. So you are a member of the bar in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

J. Fischman

California?

A. Yes.

Q. You are not a member of the bar in New York?

A. Yes, we have established that.

Q. And your claim is that you -- withdrawn.

You said taking the bar was an emotional investment of time and emotional resources. I am paraphrasing.

But you took the bar in California and I take it you thought it was worth it to do that; right?

A. I had taken the bar in California 20 years earlier when I had just graduated law school and didn't have the responsibilities of raising a family or taking care of a family and yes, it was to practice law in California. I took the California Bar.

Q. Was it worth it?

A. Yes.

Q. Why not do the same in New York?

A. Because the jobs that I wanted in New York would have been to work in a corporation as

1 J. Fischman

2 inhouse counsel which I had been doing for the
3 last 15 years and I did not need the New York Bar
4 to do that. I needed the New York Bar only to do
5 the temp work that would have kind of supplemented
6 my income until I got a full time position.

7 Q. You said you had to leave the practice
8 of law because of the separation with MCHA; right?

9 A. Yes.

10 Q. So if you had taken the bar in New
11 York that would have opened up a whole range of
12 additional opportunities to practice in New York;
13 correct?

14 MR. BERMAN: Object to form.

15 A. Like what?

16 Q. As you know I am asking the questions.

17 A. You are doing as good a job as anybody
18 in testifying.

19 So tell me do you think there were
20 other opportunities that I missed. I think that I
21 applied to the opportunities for which I was
22 qualified for.

23 Q. My question is: Do you agree or
24 disagree that taking the New York Bar would have
25 opened up a range of opportunities for a lawyer

1 J. Fischman

2 that would otherwise not be available?

3 MR. BERMAN: Object to form.

4 A. I disagree because I don't believe
5 that taking the New York Bar would have opened any
6 additional opportunities for me for which I wasn't
7 already qualified for.

8 MO MR. FORTINSKY: Move to strike as not
9 responsive.

10 Q. I am not asking about you personally.
11 I am asking about the general principle.

12 Do you agree that applying for the New
13 York -- sorry.

14 Would you agree that being a member of
15 the New York Bar opens up a range of possible job
16 opportunities that are otherwise unavailable to a
17 lawyer?

18 MR. BERMAN: Object to form.

19 A. What kind of lawyer?

20 Q. A lawyer generally.

21 A. I think it depends on what kind of
22 lawyer you are talking about and what kind of
23 practice that person is interested in doing.

24 Q. Can you practice law in New York State
25 without being admitted to the bar in New York?

1 J. Fischman

2 A. No. Except if you are a registered
3 inhouse counsel at a corporation, then you can
4 practice law in the State of New York without
5 being a member of the New York Bar.

6 Q. And you were registered?

7 A. Yes.

8 Q. Who did you register with?

9 A. The State Bar of New York.

10 Q. And when did you first register?

11 A. When I first moved to New York in
12 2008.

13 Q. Has your registration lapsed since
14 then?

15 A. You are required by law to send a
16 notice of termination within a certain time period
17 of your termination from the corporation from
18 which you were registered. So yes. It is not
19 lapsed. I had to terminate it.

20 Q. When did that happen? When did you
21 terminate it?

22 A. Sometime after my termination from
23 Mitsubishi.

24 Q. You said you applied for more than a
25 hundred jobs I think you said; right.

1 J. Fischman

2 How many of them did you have
3 interviews with?

4 A. Very few.

5 Q. Approximately?

6 A. A dozen.

7 Q. What companies?

8 A. I would have to look at the list to
9 recall. I was supposed to have an interview at
10 Amex.

11 I had an interview with CBRE. I had
12 multiple interviews there. Maybe had a couple of
13 other phone interviews, but I really didn't get
14 very many interviews.

15 Q. How far did you get in the process?

16 A. I may have had an interview at
17 MasterCard.

18 Q. And then did you advance in the
19 process beyond that, beyond the first interview
20 stage?

21 A. I would have to go back and see the
22 list of companies to recall.

23 Q. Were there any companies where you got
24 into a negotiation about salary?

25 A. No.

1 J. Fischman

2 Q. Were there any companies where they
3 said they wanted to call your references?

4 A. Yes.

5 Q. Which ones?

6 A. Certainly when I was speaking with
7 Bliss the recruiter and RPN, the recruiters and
8 Elise Abraham, another recruiter. All of them
9 asked for my list of references because they
10 wanted to proposition me I suppose.

11 Q. Of the dozen companies that you
12 interviewed with, did any of them ask for your
13 references?

14 A. Possibly. I would have to look at the
15 list. I am not even sure I got interviews with a
16 dozen.

17 Q. But do you remember any instance in
18 which you were asked to provide an employer after
19 your interview with a list of references to call?

20 A. I believe that I was asked on a few
21 occasions do you have references. Who can we call
22 at Mitsubishi?

23 Q. Who asked you that?

24 A. I would have to look at the list again
25 to see who they are.

1 J. Fischman

2 Q. Do you have that list?

3 A. We have produced the list of all the
4 places I applied to.

5 Q. What about the places you interviewed,
6 did you produce that?

7 A. I am not sure if we had a separate
8 list. I don't think it was segregated.

9 RQ MR. FORTINSKY: We would call for the
10 production of that list if it hasn't been --

11 A. I don't think we have a separate list.

12 Q. You mentioned just now that you would
13 have to look at the list. That was the list --

14 A. No. The list I am referring to is the
15 list of all the applications that might jog my
16 memory as to where I had interviews.

17 Q. But --

18 A. Because there were so few.

19 Q. As you sit here today, you can't think
20 of any instance, any specific name of a company
21 that asked you for your references?

22 A. I think MasterCard.

23 Q. And did you provide the references?

24 A. I would have, yes.

25 Q. And did you hear anything further from

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X
JENNIFER S. FISCHMAN,

5 PLAINTIFF,

6 -against- Civil Action No.:
18-CV-08188

7
8 MITSUBISHI CHEMICAL HOLDINGS AMERICA, INC.;
9 MITSUBISHI CHEMICAL HOLDINGS CORPORATION;
10 NICOLAS OLIVA, in his individual and
11 professional capacities; DONNA COSTA, in
12 her individual and professional capacities;
and JOHN DOES 1-10, in their individual and
professional capacities,

DEFENDANTS.

13 -----X
14 DATE: July 26, 2021
15 TIME: 11:24 A.M.
16

17 CONTINUED VIDEOTAPED VIDEO CONFERENCE
18 DEPOSITION of the Plaintiff, JENNIFER STONE
19 FISCHMAN, s/h/a JENNIFER S. FISCHMAN, taken
20 by the respective parties, pursuant to
21 Agreement and to the Federal Rules of Civil
22 Procedure, held at the above-mentioned date
23 and time, before Frances Fitzpatrick, a
24 Notary Public of the State of New York.
25

A P P E A R A N C E S:
(Via Video Conference)

VALLI KANE & VAGNINI, LLP
Attorneys for the Plaintiff
JENNIFER S. FISCHMAN
600 Old Country Road, Suite 519
Garden City, New York 11530
BY: MATTHEW L. BERMAN, ESQ.
ROBERT J. VALLI, JR., ESQ.
SARA WYN KANE, ESQ.

GORDON REES SCULLY MANSUKHANI LLP
Attorneys for the Defendants
MITSUBISHI CHEMICAL HOLDINGS AMERICA,
INC., NICOLAS OLIVA and DONNA COSTA
One Battery Park Plaza, 28th Floor
New York, New York 10004
BY: MERCEDES COLWIN, ESQ.
BRITTANY L. PRIMAVERA, ESQ.
File # MCHEM-1135398

SHEARMAN & STERLING LLP
Attorneys for the Defendant
MITSUBISHI CHEMICAL HOLDINGS CORPORATION
599 Lexington Avenue
New York, New York 10022
BY: JEROME S. FORTINSKY, ESQ.
SAMUEL JOLLY, ESQ.

CLARICK GUERON REISBAUM LLP
Attorneys for the Defendant
DONNA COSTA
220 Fifth Avenue
New York, New York 10001
BY: NICOLE GUERON, ESQ.

A P P E A R A N C E S : (Continued)

A L S O P R E S E N T :

Legal Videographer - Carlos King

Nicolas Oliva

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JENNIFER STONE FISCHMAN

MR. BERMAN: I'll object to form on the grounds that it seems that your question calls for mental impressions of an attorney. If you want to ask a factual question, I don't have any issue with that.

MR. FORTINSKY: I am intending for it just to be a factual question.

Q. As of early February, had you reached the decision to sue?

A. No.

Q. When did you reach the decision to sue?

A. I couldn't say when we sued. When we got the -- when we filed the EEOC, I guess. I don't know.

Q. So, what caused you to change from not being certain about your intention to sue as of February 2017 to becoming later certain that you intended to sue?

MR. BERMAN: Object to form.

A. I couldn't recall exactly what the steps were at that time, but I will tell you it was a pretty dark time for me,

1 JENNIFER STONE FISCHMAN

2 and I was number one focused on getting
3 another job immediately. I immediately
4 started working on my resume, and I
5 immediately contacted every recruiter that
6 I had contact with and I'm sure it was a
7 combination of timing, and, you know, and
8 the concern of, you know, I had been so
9 wronged that, yeah, I was going to sue.

10 Q. Whose handwriting is on Exhibit
11 31?

12 A. That's my handwriting.

13 Q. All of it?

14 A. All of it.

15 Q. What does the word, never, on
16 the upper right refer to?

17 A. That refers in direct response
18 to the sentence next to it where Nick Oliva
19 writes, I worked very hard to provide you
20 with guidance and feedback to assist you in
21 overcoming these deficiencies, and my
22 response was, he never did that and there
23 was never a need for it.

24 Q. Are you saying that you never
25 got any guidance or feedback from Mr.

1 JENNIFER STONE FISCHMAN

2 sorry -- on a legal pad, and the next page,
3 as well, that I found on an old legal pad,
4 and I realized I had not submitted it with
5 my job search material, and, so, I
6 submitted it.

7 Q. Okay. So, these two pages
8 relate to your job search I take it?

9 A. Yeah. Uh-hum.

10 Q. And this is all -- do these two
11 notes all relate to the same single
12 conversation with a recruiter?

13 A. No, no, no, not at all. I'm
14 not even sure they are from the same -- I'm
15 not even sure -- they're not from the same
16 pad even, so, no, and the first page, that
17 MLA, that would have been I think the name
18 of the recruiter, but I'm not sure, but
19 these would have related to jobs that I
20 would have put on the listing that I did
21 provide to you that I provided to New York
22 State Department of Labor of potential jobs
23 that I --

24 Q. Do you recall when these notes
25 were made?

1 JENNIFER STONE FISCHMAN

2 A. I believe these were made
3 around the spring of -- spring and summer
4 of 2017.

5 Q. And is the same true for 828?

6 A. Yes.

7 Q. And these notes also relate to
8 your job search I take it?

9 A. Yeah.

10 Q. For this first -- what is MLA?

11 A. That might have been the name
12 of this company for Morgan Applied, but I
13 can't recall.

14 Q. Did you -- what happened with
15 your application?

16 A. It didn't go anywhere on this
17 form. I probably had a phone interview,
18 but I'd have to look back on -- I'd have to
19 look back on the listing I gave you from --

20 Q. You had a phone interview with
21 Morgan Applied?

22 A. I believe so.

23 Q. Okay. And then lower down it
24 says, Kathy Lueders. Who is she?

25 A. I can't recall at this time.